Legislature Takes Steps to Ensure Texas Remains the Most Business-Friendly State in the Union

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On February 27, 2025, Senator Bryan Hughes (R-Tyler) filed Senate Bill 29 (S.B. 29), proposing several corporate reforms designed to ensure that Texas remains the premier business-friendly jurisdiction in the nation. If enacted, S.B. 29 would amend the Texas Business Organizations Code to provide greater clarity and predictability regarding judicial review of corporate decision-making.

Significant Reforms

S.B. 29 introduces key foundational amendments that would codify the business judgement rule and provide Texas corporations with greater protection against opportunistic litigation. Notably, S.B. 29 would permit Texas corporations to adopt minimum ownership thresholds that shareholders must meet to initiate derivative claims.

1. Codification of the Business Judgment Rule

The business judgment rule, a well-established common law principle in most states, protects corporate directors from personal liability for decisions made in good faith, with reasonable care, and in the company's best interests. Texas has long recognized the business judgement rule under common law (*See* Cates v. Sparkman, 73 Tex. 619, 11 S.W. 846 (1889)). But, given the uncertainty that has developed recently in the Delaware Chancery Court, the Texas Legislature felt it necessary to strengthen this protection for directors. S.B. 29 would formally codify the business judgement rule into Texas law and strengthen its protections by shifting the burden of proof in fiduciary duty claims to the plaintiff. This reform would mitigate the risk of strategic litigation tactics that seek to circumvent the rule's protections, providing greater legal certainty for corporate directors and shareholders when making and executing business decisions. [Bill Section 10; proposed new Texas

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Business Organizations Code Section 21.419]

2. Strengthened Protections Against Opportunistic Litigation

The following key proposals introduced in S.B. 29 function to safeguard businesses from meritless lawsuits and provide bolstered protection from disruptive litigation tactics:

- **Minimum ownership threshold for derivative lawsuits** – Shareholders must meet a specified ownership percentage before initiating a derivative action, preventing individuals with minimal stakes from pursuing claims that may not align with the broader interests of the company. [Bill Section 11; proposed amendment to Texas Business Organizations Code Section 21.551(2)]
- **Prohibition on the recovery of attorney's fees in disclosure-only settlements** – Attorneys cannot recover fees in derivative lawsuits that result in disclosure-only settlements. [Bill Section 14; proposed amendment to Texas Business Organizations Code Section 21.561]
- **Preliminary judicial determination of director independence** – Companies can seek a judicial determination on the independence of directors serving on special committees before such directors are challenged as part of a derivative claim. [Bill Sections 7 and 8; proposed amendment to Texas Business Organizations Code Section 21.416 (reviewing transactions), and new Section 21.4161 (special litigation committees)]

Additional Considerable Reforms

Beyond its foundational reforms, S.B. 29 contains several key provisions that would impact companies based in Texas:

- **Exclusive venue for internal corporate disputes** – Companies may designate the recently created Texas Business Court or another specified Texas court as the exclusive venue for resolving internal corporate disputes.

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- **Waiver of jury trials for internal disputes** – Corporations will be able to, like LLCs and LPs, include a waiver of jury trial in their governing documents for internal disputes.
- **Clarification of Texas Business Law** – S.B. 29 ensures that the Texas Business Organizations Code will not be subject to judicial decisions or the interpretation of laws from other states.
- **Preserved filing dates for corrected filings** – Companies that correct filings rejected by the Texas Secretary of State can still retain the initial date of filing.
- **Restrictions on books and records requests** – Under S.B. 29, emails and similar communications will not generally constitute corporate books and records; and requests for books and records cannot serve as a substitute for discovery in certain actions.

Implications for Public Companies

S.B. 29 introduces substantial reforms that could significantly impact the governance and litigation exposure of companies incorporated in Texas, particularly publicly traded companies. By enhancing legal protections for corporate leadership, streamlining corporate dispute resolution, and granting businesses greater control over litigation, S.B. 29 would create a more predictable and business-friendly legal environment. If enacted, these changes would make Texas a significantly more attractive jurisdiction for companies considering incorporation or relocation. For more information, please contact the authors or any attorney with Frost Brown Todd's Private Equity and Venture Practice.

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